

**AFSCME MEF/CEO AND CITY OF SAN JOSE  
MEF & CEO JOINT BARGAINING CONTRACT NEGOTIATIONS 2013**

**AFSCME COUNTER-PROPOSAL – LAYOFF (INCLUDING THE LAYOFF DISPUTE  
RESOLUTION PROCESS)**

**Proposed MEF language:**

**ARTICLE 11 LAYOFF**

11.1 As used in this Article, the following words and phrases shall be defined as follows:

11.1.1 Seniority as defined in the Layoff and Reassignment Policy contained in the City Policy Manual.

11.1.2 A lower class shall mean a class with a lower salary range.

11.1.3 A position in a lateral class shall mean a position in a class with the same salary range.

11.1.4 A position in a higher class shall mean a position in a class with a higher salary range.

11.2 The City will notify the Union within three (3) working days when a new or updated seniority list for each and every classification pertaining to any employee(s) represented by the Union has been posted or updated. The determination of seniority based on section 11.3.3.2, if applicable, shall be made prior to the publication of a seniority list.

11.23 Order of Layoff. When one (1) or more employees in the same class in a City department are to be laid off for lack of work, purposes of economy, curtailment of positions or other reason, the order of layoff shall be as follows:

11.23.1 Provisional employees in the order to be determined by the appointing authority.

11.23.2 Probationary employees in the order to be determined by the appointing authority.

11.23.3 Permanent employees in inverse order of seniority within the classification being reduced, or in a higher class.

11.3.3.1 If two (2) or more permanent employees have the same class seniority, then ranking is based on citywide seniority.

11.3.3.2 If two (2) or more permanent employees have the same class and same citywide seniority, then ranking is based on the scores on the eligible list that was used for the original hiring in the classification or the quantitative examination scores used in the original hiring. In the absence of eligible list scores or quantitative examination scores, ranking on the seniority list shall be determined as follows:

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1. The sum of the last four (4) digits of the employee's social security number, with the lowest sum being the least senior on the list and following in successive order to the highest sum total being the most senior on the established list.
2. If the sum total of the last four (4) digits of the employee's social security number should result in another tie, a random draw shall be conducted of ONLY the employees with the sum total tie. The first drawn name would be the least senior of the secondary tie and subsequent draw (or draws) continuing until all secondary tie placements on the list are filled.
3. In the event there is an exemption request submitted by a department or manager, the tie-breaker process shall be used to establish the class seniority list prior to any exemption request being considered or granted, so the list can accurately reflect the appropriate order prior to any decisions.

11.23.4 Permanent employees shall be given every opportunity for transfer to other departments when layoff is pending.

11.34 Notice of Layoff. Employees subject to the provisions of this Article shall, wherever possible, be given at least thirty (30) calendar days notice in writing prior to the effective date of layoff. The appropriate Unions shall receive concurrent notice, and upon written request within seven (7) calendar days after the notice is given shall be afforded an opportunity to meet with the appropriate City representatives to discuss the circumstances necessitating the layoff and any proposed alternatives to such layoff.

11.45 Reassignment in Lieu of Layoff. In the event of layoff, any employee so affected may elect to:

11.45.1 Accept a position in a lateral or lower class in which the employee has previously served, or a position in a lateral or lower class within the series containing the class from which the employee is being laid off, provided the employee is otherwise qualified and is more senior than the least senior employee in such lateral or lower class.

11.45.2 Accept a vacant position in a lateral or lower class for which the employee has the necessary education, experience, and training as determined by the Director of Human Resources or designee. An employee may also accept a vacant position in a higher class, provided the employee has held permanent status in such higher class, and further provided that the employee's removal from the higher class was voluntary and occurred during the employee's most recent period of employment. Adverse decisions of the Director regarding necessary education, experience, and training shall be subject to the grievance procedure including arbitration. The employee may file

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the grievance at Step III within ten working days of the date of being notified of the adverse decision.

- 11.45.3 Any employee entitled to an option noted above, which involves assignment to a lower classification, may elect to be placed on layoff in lieu of accepting such assignment to the lower class. In the event the employee elects to be placed on layoff, such employee will only be recalled to the classification from which the employee elected to be placed on layoff or to any higher classification to which the employee may be entitled pursuant to the provisions of this Article.
- 11.56 Except as otherwise provided herein, no employee shall be entitled to a position in a higher class as a result of the application of the provisions of this Article.
- 11.67 Layoff Reinstatement Eligible List
- 11.67.1 The names of such persons who are laid off or who elect reassignment in lieu of layoff in accordance with the provisions of Section 11.5 of this Article shall be placed upon a Reinstatement Eligible List in inverse order of seniority, i.e., the person with the greatest seniority on the Reinstatement Eligible List for the classes affected shall be offered reinstatement when a vacancy exists in the affected class. In the event the person refuses the offer of reinstatement, such person's name shall be removed from the Reinstatement Eligible List, unless such person has reinstatement rights under the provisions of this Article to a higher class than the one in which the reinstatement is being refused.
- 11.67.2 In the event an employee accepts reinstatement to a lower class to which the employee is entitled, such person's name shall remain on the Reinstatement Eligible List for reinstatement to a lateral class, provided such person, except for lack of seniority, would have been otherwise entitled to such lateral class at the time of the most recent layoff.
- 11.67.3 Any person who is reinstated to a class which is the highest class to which they would have been entitled at the time of the layoff shall have the employee's name removed from the Reinstatement Eligible List.
- 11.67.4 In the event a person on layoff cannot be contacted by the City through usual and customary channels within ten (10) working days, such person's name shall be removed from the Reinstatement Eligible List, providing, however, that such person within the three-year period specified herein may request that his/her name be replaced on the Reinstatement Eligible List and such person's name may, in the sole discretion of the Director of Human Resources, or designee, be returned to the Reinstatement Eligible List.

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11.67.5 In no event shall the names of any person laid off pursuant to the provisions of this Article remain on a Reinstatement Eligible List for a period longer than three years from the effective date of such person's most recent layoff.

11.78 Upon reinstatement to any classification to which the employee is entitled pursuant to the provisions of this Article, all benefits acquired by the employee prior to layoff shall also be reinstated. An employee shall not receive credit for time spent on layoff in computing time for any benefit entitlement.

11.89 Part-Time Employees and Layoffs

11.89.1 Part-time benefited employees. When identifying part-time benefited positions for elimination, Departments shall consider the following factors in determining the employee(s) to be displaced:

- Seniority (as determined by total hours worked in current classification) and;
- Department and/or program needs inclusive of special skills

11.89.1.1 Departments shall make available a written explanation of the factors and methods applied to determine displacements for their department and a written explanation to an affected employee upon request.

11.89.1.2 Employees impacted by the displacements may appeal the decision to the Director of Human Resources. The written response of the Director shall be final and binding.

11.89.1.3 Any employees displaced by layoffs may elect to be placed in the part-time employee rehire pool and if selected for rehire in their former classification may return through the non-competitive process.

11.10 Exemptions from Layoff. Within three (3) working days of the Director of Human Resources and/or the Office of the City Manager receiving a Department Director's memo requesting an exemption from bumping or layoff during the layoff process for a position filled by an employee represented by the Union, the City shall provide a copy of the memo to the Union. The Union may, within five (5) working days of receipt of the Department Director's memo, submit a written objection to the request for exemption from bumping or layoff during the layoff process, for consideration by the City. The Union shall also be afforded an opportunity to meet with the Department Director (or designee) and appointing authority, within three (3) working days of submitting its written objections, for an explanation of the Department's request for exemption. The City will notify the Union of any decisions to grant exemptions from the bumping process for positions filled by employees represented by the Union within three (3) working days of receipt of the written objection or within three (3) working days of the meeting with the Department Director/designee and appointing authority, whichever is

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later. If the Union disagrees with the decision, the layoff dispute resolution may be invoked to resolve the matter.

*Move and incorporate Exhibit III – Process for Layoff Dispute Resolutions into Article 11 - Layoff:*

**11.11 Process for Layoff Dispute Resolutions.**

In lieu of the traditional process for handling grievances, the following process is recommended for handling specified disputes related to the layoff process.

**11.11.1 Step One: Research and Discovery**

1. Employee contacts Human Resources regarding concern. Employee fills out a form describing issue and requesting research.
2. Human Resources researches concern, and, based on data, makes a decision.

**11.11.2 Step Two: Review and Resolution**

If the employee is not satisfied with Human Resources' ruling, and the issue is appealable through the dispute process, the employee can request an additional review by the Director of Employee Relations or designee and a Union Representative (Business Agent or high ranking Officer).

1. Employee contacts their Union regarding the concern.
2. The Union notifies Employee Relations of the situation.
3. Employee Relations schedules a meeting date in Human Resources to review documents in question.
4. The Director of Employee Relations or designee, Union Representative and employee meet in the Human Resources Department to review documents. A Human Resources representative is available for background and information.
5. Based on data, and after discussion and consultation the Union representative, the Director of Employee Relations or designee makes a bench decision. If the Union does not agree with the decision, the issue can continue through the dispute process and appeal may be filed to Step 3.

**11.11.3 Step Three: Appeal Process**

If the employee is still not satisfied, and the issue is appealable through the dispute process, the employee can appeal to a Review Board. The Review Board is comprised of:

- Director of Employee Relations or one designee.
- One Union Representative - Business Agent or high ranking Officer (one from each affected Union).
- One Outside Neutral Party (same individual for all cases to ensure consistency).

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The outside neutral party will decide the final ruling only if the Director of Employee Relations or designee and Union Representative have opposing positions. All Review Board rulings are final.

1. Employee contacts Union regarding appeal.
2. Union notifies Employee Relations of situation.
3. Employee Relations schedules hearing date with outside neutral party.
4. Employee presents their case to the Review Board.
5. Human Resources presents their case to the Review Board.
6. Review Board hears testimony, reviews document, and makes a final bench decision.

**11.11.4 Deadlines**

**11.11.4.1 Step I Request for Step 1:** An employee has ~~five (5)~~ ten (10) working days, following receipt of a layoff notice, to complete a request for information form in Human Resources. This action will result in Step 1, Research and Discovery.

**11.11.4.1.1 Response to Request:** Human Resources has three (3) days, from the date of the request, to investigate records and respond to the employee.

**11.11.4.2 Step II Request for Step 2:** An employee has two (2) working days, following Step I response from Human Resources, to file a request for Step 2 with Employee Relations.

**11.11.4.2.1 Response to Request:** Employee Relations has three (3) working days, from the date of the request, to schedule the review meeting with Human Resources, a Union representative and the employee.

**11.11.4.3 Step III Request for Step 3:** An employee has three (3) working days, following the Step II decision, to file a request for Step 3 with Employee Relations.

**11.11.4.3.1 Response to Request:** Employee Relations has three (3) working days, from the date of the request, to schedule a hearing date with the Review Board.

**Proposed CEO language:**

**ARTICLE 14 LAYOFF**

14.1 The City will notify the Union within three (3) working days when a new or updated seniority list for each and every classification pertaining to any employee(s) represented by the Union has been posted or updated. The determination of seniority based on section 11.3.3.2, if applicable, shall be made prior to the publication of a seniority list.

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**14.12 Order of Layoff**

When one (1) or more employees in the same class in a City department are to be laid off for lack of work, purposes of economy, curtailment of positions or other reason, the order of layoff shall be as follows:

14.12.1 Provisional employees in the order to be determined by the appointing authority.

14.12.2 Probationary employees in the order to be determined by the appointing authority.

14.12.3 Permanent employees in inverse order of seniority within the classification being reduced, or in a higher class.

14.2.3.1 If two (2) or more permanent employees have the same class seniority, then ranking is based on citywide seniority.

14.2.3.2 If two (2) or more permanent employees have the same class and same citywide seniority, then ranking is based on the scores on the eligible list that was used for the original hiring in the classification or the quantitative examination scores used in the original hiring. In the absence of eligible list scores or quantitative examination scores, ranking on the seniority list shall be determined as follows:

1. The sum of the last four (4) digits of the employee's social security number, with the lowest sum being the least senior on the list and following in successive order to the highest sum total being the most senior on the established list.
2. If the sum total of the last four (4) digits of the employee's social security number should result in another tie, a random draw shall be conducted of ONLY the employees with the sum total tie. The first drawn name would be the least senior of the secondary tie and subsequent draw (or draws) continuing until all secondary tie placements on the list are filled.
3. In the event there is an exemption request submitted by a department or manager, the tie-breaker process shall be used to establish the class seniority list prior to any exemption request being considered or granted, so the list can accurately reflect the appropriate order prior to any decisions.

14.12.4 Permanent employees shall be given every opportunity for transfer to other departments when layoff is pending.

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**14.23** Notice of Layoff

Employees subject to the provisions of this Article shall, wherever possible, be given at least thirty (30) calendar days notice in writing prior to the effective date of layoff. The ~~appropriate Employee Organizations~~ Union shall receive concurrent notice, and upon written request within seven (7) calendar days after the notice is given shall be afforded an opportunity to meet with the appropriate City representatives to discuss the circumstances necessitating the layoff and any proposed alternatives to such layoff.

**14.34** Reassignment in Lieu of Layoff

In the event of layoff, any employee so affected may elect to:

14.34.1 Accept a position in a lateral or lower class in which he/she has previously served, or a position in a lateral or lower class within the series containing the class from which the employee is being laid off, provided he/she is otherwise qualified and is more senior than the least senior employee in such lateral or lower class.

14.34.2 Accept a vacant position in a lateral or lower class for which he/she has the necessary education, experience, and training as determined by the Director of Human Resources. An employee may also accept a vacant position in a higher class, provided he/she has held permanent status in such higher class, and further provided that the employee's removal from the higher class was voluntary and occurred during his/her most recent period of employment. Adverse decisions of the Director regarding necessary education, experience, and training shall be subject to the grievance procedure including arbitration. The employee may file the grievance at Step III within ten (10) working days of the date of being notified of the adverse decision.

14.35.2 Any employee entitled to an option noted above, which involves assignment to a lower classification, may elect to be placed on layoff in lieu of accepting such assignment to the lower class. In the event the employee elects to be placed on layoff, such employee will only be recalled to the classification from which the employee elected to be placed on layoff or to any higher classification to which the employee may be entitled pursuant to the provisions of this Article.

**14.45** As used in this Article, the following words and phrases shall be defined as follows:

14.45.1 Except as otherwise provided above, seniority shall be defined as the length of continuous paid employment within any permanent class or classes within the classified service of the City. Seniority shall be retained, but shall not accrue, during any period of leave without pay, except for authorized military leave.

14.45.2 A lower class shall mean a class with a lower salary range.





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- 14.45.3 A position in a lateral class shall mean a position in a class with the same salary range.
- 14.45.4 A position in a higher class shall mean a position in a class with a higher salary range.
- 14.56 Except as otherwise provided herein, no employee shall be entitled to a position in a higher class as a result of the application of the provisions of this Article.
- 14.67 Layoff Reinstatement Eligible List
- 14.67.1 The names of such persons who are laid off or who elect reassignment in lieu of layoff in accordance with the provisions of Section 14.3 of this Article shall be placed upon a Reinstatement Eligible List in inverse order of seniority, i.e., the person with the greatest seniority on the Reinstatement Eligible List for the classes affected shall be offered reinstatement when a vacancy exists in the affected class. In the event the person refuses the offer of reinstatement, such person's name shall be removed from the Reinstatement Eligible List, unless such person has reinstatement rights under the provisions of this Article to a higher class than the one in which the reinstatement is being refused.
- 14.67.2 In the event an employee accepts reinstatement to a lower class to which he/she is entitled, such person's name shall remain on the Reinstatement Eligible List for reinstatement to a lateral class, provided such person, except for lack of seniority, would have been otherwise entitled to such lateral class at the time of the most recent layoff.
- 14.67.3 Any person who is reinstated to a class which is the highest class to which he/she would have been entitled at the time of the layoff shall have his/her name removed from the Reinstatement Eligible List.
- 14.67.4 In the event a person on layoff cannot be contacted by the City through usual and customary channels within ten (10) working days, such person's name shall be removed from the Reinstatement Eligible List, providing, however, that such person within the three (3) year period specified herein may request that his/her name be replaced on the Reinstatement Eligible List and such person's name may, in the sole discretion of the Director, be returned to the Reinstatement Eligible List.
- 14.67.5 In no event shall the names of any person laid off pursuant to the provisions of this Article remain on a Reinstatement Eligible List for a period longer than three (3) years from the effective date of such person's most recent layoff.
- 14.78 Upon reinstatement to any classification to which the employee is entitled pursuant to the provisions of this Article, all benefits acquired by the employee prior to his/her layoff

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shall also be reinstated. An employee shall not receive credit for time spent on layoff in computing time for any benefit entitlement.

14.9 Exemptions from Layoff. Within three (3) working days of the Director of Human Resources and/or the Office of the City Manager receiving a Department Director's memo requesting an exemption from bumping or layoff during the layoff process for a position filled by an employee represented by the Union, the City shall provide a copy of the memo to the Union. The Union may, within five (5) working days of receipt of the Department Director's memo, submit a written objection to the request for exemption from bumping or layoff during the layoff process, for consideration by the City. The Union shall also be afforded an opportunity to meet with the Department Director (or designee) and appointing authority, within three (3) working days of submitting its written objections, for an explanation of the Department's request for exemption. The City will notify the Union of any decisions to grant exemptions from the bumping process for positions filled by employees represented by the Union within three (3) working days of receipt of the written objection or within three (3) working days of the meeting with the Department Director/designee and appointing authority, whichever is later. If the Union disagrees with the decision, the layoff dispute resolution may be invoked to resolve the matter.

14.10 Process for Layoff Dispute Resolutions.

In lieu of the traditional process for handling grievances, the following process is recommended for handling specified disputes related to the layoff process.

14.10.1 Step One: Research and Discovery

1. Employee contacts Human Resources regarding concern. Employee fills out a form describing issue and requesting research.
2. Human Resources researches concern, and, based on data, makes a decision.

14.10.2 Step Two: Review and Resolution

If the employee is not satisfied with Human Resources' ruling, and the issue is appealable through the dispute process, the employee can request an additional review by the Director of Employee Relations or designee and a Union Representative (Business Agent or high ranking Officer).

1. Employee contacts their Union regarding the concern.
2. The Union notifies Employee Relations of the situation.
3. Employee Relations schedules a meeting date in Human Resources to review documents in question.
4. The Director of Employee Relations or designee, Union Representative and employee meet in the Human Resources Department to review documents. A Human Resources representative is available for background and information.
5. Based on data, and after discussion and consultation the Union representative, the Director of Employee Relations or designee makes a bench decision. If the Union does not agree with the decision, the

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issue can continue through the dispute process and appeal may be filed to Step 3.

**14.10.3 Step Three: Appeal Process**

If the employee is still not satisfied, and the issue is appealable through the dispute process, the employee can appeal to a Review Board. The Review Board is comprised of:

- Director of Employee Relations or one designee.
- One Union Representative - Business Agent or high ranking Officer (one from each affected Union).
- One Outside Neutral Party (same individual for all cases to ensure consistency).

The outside neutral party will decide the final ruling only if the Director of Employee Relations or designee and Union Representative have opposing positions. All Review Board rulings are final.

1. Employee contacts Union regarding appeal.
2. Union notifies Employee Relations of situation.
3. Employee Relations schedules hearing date with outside neutral party.
4. Employee presents their case to the Review Board.
5. Human Resources presents their case to the Review Board.
6. Review Board hears testimony, reviews document, and makes a final bench decision.

**14.10.4 Deadlines**

14.10.4.1 Step I Request for Step 1: An employee has ten (10) working days, following receipt of a layoff notice, to complete a request for information form in Human Resources. This action will result in Step 1, Research and Discovery.

14.10.4.1.1 Response to Request: Human Resources has three (3) days, from the date of the request, to investigate records and respond to the employee.

14.10.4.2 Step II Request for Step 2: An employee has two (2) working days, following Step I response from Human Resources, to file a request for Step 2 with Employee Relations.

14.10.4.2.1 Response to Request: Employee Relations has three (3) working days, from the date of the request, to schedule the review meeting with Human Resources, a Union representative and the employee.

14.10.4.3 Step III Request for Step 3: An employee has three (3) working days, following the Step II decision, to file a request for Step 3 with Employee Relations.



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14.10.4.3.1 Response to Request: Employee Relations has three (3) working days, from the date of the request, to schedule a hearing date with the Review Board.

